

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Southern Media Communications, Inc.	)	File Number EB-02-AT-304
	)	
Licensee of AM Radio Station WBCA, Bay	)	NAL/Acct. No. 200232480021
Minnette, Alabama, and Owner of Unregistered	)	
Antenna Structure Located at 30° 52' 10" N	)	FRN 0004-9693-58
Latitude by 87° 46' 09" W Longitude in	)	
Bay Minnette, Alabama	)	

**FORFEITURE ORDER**

**Adopted: November 13, 2003**

**Released: November 17, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of eleven thousand dollars (\$11,000) to Southern Media Communications, Inc. ("SMC"), for willful violation of Section 11.35(a) and 17.4(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve, respectively, SMC's failure to have operational Emergency Alert System ("EAS") Equipment and its failure to register its antenna structure.

2. On September 24, 2002, the Commission's Atlanta, Georgia, Field Office ("Atlanta Office") released a *Notice of Apparent Liability for Forfeiture* ("NAL")<sup>2</sup> to SMC for a forfeiture in the amount of eleven thousand dollars (\$11,000) for violation of Sections 11.35(a) and 17.4(a) of the Rules. SMC filed its response to the NAL on October 10, 2002.

**II. BACKGROUND**

3. SMC is the licensee of AM broadcast station WBCA, Bay Minette, Alabama, and owns that station's antenna structure. According to the Commission's records, the antenna structure's height above ground is over 200 feet. On August 22, 2002, an agent from the Atlanta Office inspected WBCA's antenna structure, located at 30° 52' 10" N Latitude 87° 46' 09" W Longitude in Bay Minette, Alabama. The agent observed that there was no antenna structure registration ("ASR") number posted near the base of the structure. The agent interviewed SMC's president, Walter Brown, on the same day. Mr. Brown told the agent that he believed the antenna structure was registered but could not provide any supporting documentation. On September 3, 2003, the agent checked the Commission's tower registration records

---

<sup>1</sup> 47 C.F.R. §§ 11.35(a) and 17.4 (a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480021 (Enf. Bur., Atlanta Office, released September 24, 2002).

and determined that WBCA's tower was not registered. A recent check of the Commission's tower registration records indicates that WBCA's tower remains unregistered.

4. On the same day the agent also inspected the EAS equipment for WBCA, located at the station's main studio in Atmore, Alabama. The agent found that EAS equipment was installed and turned on but was not operational. In particular, when the station's Chief Operator attempted to send EAS tests, the agent observed that the station did not transmit the required tests. Additionally, the agent observed that station logs contained no entries indicating that EAS tests had been conducted for at least one year or entries indicating the EAS equipment had been removed for repair.

5. On September 24, 2002, the Atlanta Office issued a *NAL* for a forfeiture in the amount of \$11,000 to SMC for willful violation of Sections 11.35(a) and 17.4(a) of the Rules. In its response, SMC seeks cancellation of the proposed monetary forfeiture "in consideration of the immediate response . . . and the problem being fixed." SMC provides an invoice dated June 21, 2001, which indicates that it paid Tuned Circuits, Inc., for "initial work on tower registration for Bay Minette and Atmore, other consulting/repair visit time to date." SMC also provides a letter dated September 4, 2002, certifying that the EAS equipment has been repaired.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining SMC's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

7. Section 17.4(a) of the Rules requires the registration of antenna structures which require notice to the Federal Aviation Administration. As provided in Section 17.7(a) of the Rules,<sup>6</sup> FAA notification is required for towers whose height above ground level exceeds 200 feet. According to the Commission's records, the height of WBCA's antenna structure is over 200 feet. The antenna structure is, therefore, required to be registered. On the basis of the FCC agent's investigation, we find that the antenna structure is not registered, and that SMC violated Section 17.4(a) by failing to register it.<sup>7</sup> The

---

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 C.F.R. § 17.7(a).

<sup>7</sup> On July 23, 2003, the Wireless Telecommunications Bureau released a Public Notice, DA-03-2411, granting a 60 day amnesty period to the owners of certain unregistered antenna structures identified during an audit. SMC's antenna structure is not among those identified during the audit and, therefore, SMC is not entitled to an amnesty period to register its tower.

invoice provided by SMC indicates that SMC engaged a contractor to perform “initial work” to register the tower. SMC states that it has notified the contractor of the problem, and instructed the contractor to register the tower; however, to date, the tower remains unregistered. As the Commission recently reiterated, “the Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”<sup>8</sup> SMC is, therefore, chargeable with knowledge of its contractor’s failure to register WBCA’s antenna structure.<sup>9</sup> We find, therefore, that SMC’s violation of Section 17.4(a) was willful.<sup>10</sup>

8. Section 11.35(a) of the Rules requires that broadcast stations have fully operational EAS equipment. The FCC agent’s investigation establishes that SMC did not have fully operational EAS equipment at its station and failed to document any efforts to ensure its operability. SMC does not dispute this violation. Based on the facts before us, we find that SMC willfully violated Section 11.35(a) of the Rules.

9. SMC states that it has repaired the EAS equipment. It is well established, however, that no mitigation of a monetary forfeiture is warranted by the Commission where the noted violations have been subsequently corrected by the subject of the forfeiture.<sup>11</sup>

10. We have examined SMC’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that SMC willfully violated Section 17.4(a) of the Rules and find that the proper forfeiture amount is \$11,000.

11. As of the adoption date of this *Order*, SMC has not yet complied with Section 17.4(a) of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,<sup>12</sup> that SMC report to the Enforcement Bureau no more than thirty (30) following the release of this *Order* whether it has come into compliance with Section 17.4(a) by registering the WBCA antenna structure. SMC’s report must be submitted in the form of an affidavit or declaration, under penalty of perjury, signed by an officer or

---

<sup>8</sup> *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

<sup>9</sup> *See Pinnacle Towers, Inc.*, 18 FCC Rcd 16365 (Enf. Bur. 2003).

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.” *See also Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>12</sup> 47 U.S.C. § 308(b).

director of the licensee. SMC should note that its continued noncompliance could result in additional enforcement action by the Enforcement Bureau.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>13</sup> **SMC IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for its failure to have operational EAS equipment and for its failure to register its antenna structure, in willful violation, respectively, of Sections 11.35(a) and 17.4(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant Section 308(b) of the Act, SMC must submit the report described in Paragraph 10, above, no more than thirty (30) days following the release of this order, to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480021 and FRN 0004-9693-58. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Southern Media Communications, Inc., at 1318 S. Main Street, Atmore, Alabama 36502.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.